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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,976	11/20/2003	Linda Thorne	850136.411	8001
<div>500 7590 02/01/2007 SEED INTELLECTUAL PROPERTY LAW GROUP PLLC 701 FIFTH AVE SUITE 5400 SEATTLE, WA 98104</div>				
			EXAMINER FERNANDEZ, SUSAN EMILY	
			ART UNIT 1651	PAPER NUMBER
			MAIL DATE 02/01/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/717,976

Applicant(s)

THORNE ET AL.

Examiner

Susan E. Fernandez

Art Unit

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 17-19 and 29-42.
Claim(s) objected to: 16.
Claim(s) rejected: 16 and 20-28.
Claim(s) withdrawn from consideration: 1-15 and 43-54.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☒ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Leon B. Lankford, Jr.
Primary Examiner
Art Unit 1651

ATTACHMENT TO ADVISORY ACTION

The response filed January 5, 2007, has been received. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior office action.

Claims 1-54 are pending. Claim 1-15 and 43-54 are withdrawn.

The amendment filed January 5, 2007, has not been entered since the amendment raises a new issue under §112, second paragraph, with respect to claim 20, since it is unclear what is considered to be "a composition for preparing an electrophoresis medium." Therefore, denial of entry of the proposed amendment is proper at this after-final stage of prosecution.

All of applicant's arguments have been fully considered but are not persuasive of error. The objection of claim 16 and the rejection under 35 U.S.C. 112, second paragraph, of claims 16 and 20-28 must be maintained as the amendment filed January 5, 2007 has not been entered.

In the arguments provided on page 13 regarding the nucleic acid content of the gellan gum of the Cole reference, the applicant has demonstrated that the gellan gum of the Cole reference does not conclusively comprise nucleic acid at a concentration of less than 10 ppm based on the weight of the gellan. Thus, rejection of claims 17-42 under 35 U.S.C. 102(b) or 35 U.S.C. 103(a) over Cole and additional references (Nochumson et al., Cole et al.) is withdrawn. However, it is respectfully noted that claim 16 does not require this concentration of nucleic acid (for instance, methods (a) and (b) recited in claim 16). Therefore, claim 16 must be rejected under 35 U.S.C. 103(a) as being unpatentable over Cole, Nochumson et al., and Cole et al., given

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that Doner et al. teaches a purified gellan composition, and that claim 16 is a product-by-process claim.

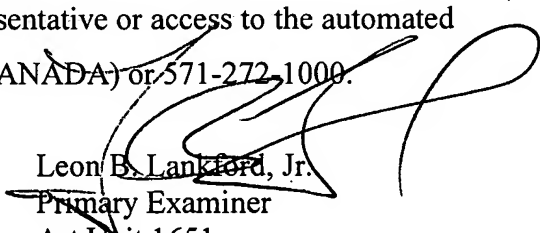
Claims 16 and 20-28 are not allowed. Claim 16 is objected to. Claims 17-19 and 29-42 are allowed. Claims 20-28 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan E. Fernandez whose telephone number is (571) 272-3444. The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on (571) 272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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